

**FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION**

Joseph M. Kupiszewski, and Spouse)
Carole S. Kupiszewski,)

Plaintiff,)

vs.)

Case No. 1:17-cv-06393
Honorable John J. Tharp, Jr.

Mohawk Finishing Products Division of)
RPM Wood Finishes Group, Inc., Successor)
to Star Finishing Products, Inc. and Star)
Chemical Co., Inc.,)

Defendant.)

**DEFENDANT RPM WOOD FINISHES GROUP, INC.'S MOTION TO
DISMISS THE SECOND AND THIRD CAUSES OF ACTION ALLEGED IN
PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant RPM Wood Finishes Group, Inc., d/b/a Mohawk Finishing Products Division of RPM Wood Finishes Group, Inc., successor in interest to Mohawk Finishing Products, Inc., which was successor in interest to Star Finishing Products, Inc., f/k/a Star Chemical Co., Inc. ("RPMWFG"), by its attorneys, SWAONSON, MARTIN & BELL, LLP, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves this Court to dismiss Plaintiffs' Second and Third Causes of Action of their Second Amended Complaint. In support, RPMWFG states as follows:

1. Plaintiffs filed their Second Amended Complaint on July 26, 2018 alleging that Joseph Kupiszewski's chronic lymphocytic leukemia (CLL) was caused by exposure to benzene and benzene-containing products manufactured, sold and/or

distributed by defendant. (*See* Plaintiffs' Second Amended Complaint, attached hereto as Exhibit A.)

1. Plaintiffs have alleged recovery under four theories of liability: negligence (First Cause of Action), breach of warranty (Second Cause of Action), willful and wanton misconduct, gross negligence, and intentional, knowing and reckless wrongdoing (Third Cause of Action), and loss of consortium (Fourth Cause of Action). (*See* Exhibit A.)

2. Plaintiffs' Second Cause of Action, Breach of Warranty, must be dismissed because it is barred by the four year statute of repose as set forth under 810 ILCS 5/2-725.

3. Plaintiffs' Third Cause of Action, Willful and Wanton Misconduct, Gross Negligence, and Intentional, Knowing and Reckless Wrongdoing, must be dismissed because it alleges a cause of action not recognized by Illinois law.

4. This motion does not affect Plaintiffs' negligence and loss of consortium theories of liability which defendant answered on August 10, 2018.

5. In further support of this motion Defendant submits the attached memorandum of law.

WHEREFORE, Defendant respectfully requests that this Court grant its Rule 12(b)(6) Motion to Dismiss Plaintiffs' Second Amended Complaint with prejudice and without leave to amend.

Respectfully submitted,

**RPM WOOD FINISHES GROUP, INC.,
d/b/a MOHAWK FINISHING PRODUCTS
DIVISION OF RPM WOOD FINISHES
GROUP, INC., SUCCESSOR IN INTEREST
TO MOHAWK FINISHING PRODUCTS,
INC., WHICH WAS SUCCESSOR IN
INTEREST TO STAR FINISHING
PRODUCTS, INC., f/k/a STAR CHEMICAL
CO., INC.**

By: /s/ Erica S. Longfield
One of its attorneys

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